

**Introduced by Senator Jackson**

February 26, 2015

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An act to amend Section 233 of the Labor Code, relating to employment.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 579, as introduced, Jackson. Employees: sick leave.

Existing law requires an employer who provides sick leave for employees to permit an employee to use the employee's accrued and available sick leave entitlement to attend to the illness of a family member, as prescribed, and prohibits an employer from denying an employee the right to use sick leave or taking specific discriminatory action against an employee for using, or attempting to exercise the right to use, sick leave to attend to such an illness.

This bill would additionally require that employer to permit an employee to use sick leave to address a childcare or school emergency, as defined, and would prohibit an employer from denying an employee the right to use sick leave or taking specific discriminatory action against an employee for using, or attempting to exercise the right to use, sick leave to address a childcare or school emergency.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 233 of the Labor Code is amended to
- 2 read:
- 3 233. (a) Any employer who provides sick leave for employees
- 4 shall permit an employee to use in any calendar year the

1 employee's accrued and available sick leave entitlement, in an  
2 amount not less than the sick leave that would be accrued during  
3 six months at the employee's then current rate of entitlement, to  
4 attend to an illness of a child, parent, spouse, or domestic partner  
5 of the ~~employee~~. *employee, or to address a childcare or school*  
6 *emergency*. All conditions and restrictions placed by the employer  
7 upon the use by an employee of sick leave also shall apply to the  
8 use by an employee of sick leave to attend to an illness of his or  
9 her child, parent, spouse, or domestic partner. This section does  
10 not extend the maximum period of leave to which an employee is  
11 entitled under Section 12945.2 of the Government Code or under  
12 the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec.  
13 ~~2606~~ 2601 et seq.), regardless of whether the employee receives  
14 sick leave compensation during that leave.

15 (b) As used in this section:

16 (1) "Child" means a biological, foster, or adopted child, a  
17 stepchild, a legal ward, a child of a domestic partner, or a child of  
18 a person standing in loco parentis.

19 (2) "*Childcare or school emergency*" means that a child cannot  
20 remain in a school or child care facility due to one of the following:

21 (A) *Illness of, or injury to, the child.*

22 (B) *Behavioral or discipline problems.*

23 (C) *Closure of the facility.*

24 (D) *A disaster or extreme weather conditions, including, but*  
25 *not limited to, fire, earthquake, or flood.*

26 ~~(2)~~

27 (3) "Employer" means any person employing another under  
28 any appointment or contract of hire and includes the state, political  
29 subdivisions of the state, and municipalities.

30 ~~(3)~~

31 (4) "Parent" means a biological, foster, or adoptive parent, a  
32 stepparent, or a legal guardian.

33 ~~(4)~~

34 (5) (A) "Sick leave" means accrued increments of compensated  
35 leave provided by an employer to an employee as a benefit of the  
36 employment for use by the employee during an absence from the  
37 employment for any of the following reasons:

38 ~~(A)~~

1 (i) The employee is physically or mentally unable to perform  
2 his or her duties due to illness, injury, or a medical condition of  
3 the employee.

4 ~~(B)~~

5 (ii) The absence is for the purpose of obtaining professional  
6 diagnosis or treatment for a medical condition of the employee.

7 ~~(C)~~

8 (iii) The absence is for other medical reasons of the employee,  
9 such as pregnancy or obtaining a physical examination.

10 ~~“Sick~~

11 (B) “Sick leave” does not include any benefit provided under  
12 an employee welfare benefit plan subject to the federal Employee  
13 Retirement Income Security Act of 1974 (Public Law 93-406, as  
14 amended) and does not include any insurance benefit, workers’  
15 compensation benefit, unemployment compensation disability  
16 benefit, or benefit not payable from the employer’s general assets.

17 (c) ~~No~~ An employer shall *not* deny an employee the right to use  
18 sick leave or discharge, threaten to discharge, demote, suspend,  
19 or in any manner discriminate against an employee for using, or  
20 attempting to exercise the right to use, sick leave to attend to an  
21 illness of a child, parent, spouse, or domestic partner of the  
22 employee. *employee, or to address a childcare or school*  
23 *emergency.*

24 (d) Any employee aggrieved by a violation of this section shall  
25 be entitled to reinstatement and actual damages or one day’s pay,  
26 whichever is greater, and to appropriate equitable relief.

27 (e) Upon the filing of a complaint by an employee, the Labor  
28 Commissioner shall enforce ~~the provisions of~~ this section in  
29 accordance with ~~the provisions of~~ Chapter 4 (commencing with  
30 Section 79) of Division 1, including, but not limited to, Sections  
31 92, 96.7, 98, and 98.1 to 98.8, inclusive. Alternatively, an employee  
32 may bring a civil action for the remedies provided by this section  
33 in a court of competent jurisdiction. If the employee prevails, the  
34 court may award reasonable attorney’s fees.

35 (f) The rights and remedies specified in this section are  
36 cumulative and nonexclusive and are in addition to any other rights  
37 or remedies afforded by contract or under other ~~provisions of~~ law.